

# FAMILY COURT MATTER

## REQUEST TO CHANGE CHILD CUSTODY

**The following documents will be needed to request a change in child custody:**

*Instructions to Request Change in Child Custody(CHC301)*

*Notice of Motion and Motion for Change in Child Custody (CHC302)*

*Affidavit in Support of Motion for Change in Child Custody(CHC303)*

*Form 11.1 – Confidential Information Form (CON111)*

*Form 11.2 – Confidential Financial Source Documents (CON112)*

*Affidavit of Personal Service (SOP102)*

*Affidavit of Service by Mail (SOP104)*

### **Important Notice and Resources:**

The Court provides forms and instructions as a general guide to the court process. The instructions explain the steps and address common questions, but are not a comprehensive guide to the law.

You are responsible for your own case. Court employees can provide general information on court rules, procedures and practices but are prohibited from giving legal advice.

If you do not understand the forms and instructions, you may contact the MN Courts Self-Help Center at [www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp) or by calling **651-259-3888**.

If you are not sure if you should file court papers or if you have questions not addressed in the instructions, you should talk to a lawyer. For lawyer referral information see [www.mncourts.gov/selfhelp/?page=252](http://www.mncourts.gov/selfhelp/?page=252).

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>.

For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

## IMPORTANT NOTICES

- YOU **CANNOT** USE THESE FORMS UNLESS THERE IS ALREADY A COURT ORDER AWARDING CUSTODY.
- YOU CANNOT ASK THE COURT TO CHANGE THE CHILD'S CUSTODY IF (1) IT HAS BEEN LESS THAN ONE YEAR SINCE THE LAST CUSTODY ORDER OR (2) IF IT HAS BEEN LESS THAN 2 YEARS SINCE THE LAST REQUEST TO CHANGE CUSTODY, UNLESS THE CHILD(REN) IS/ARE CURRENTLY IN DANGER OR UNLESS THERE IS A PERSISTENT AND WILFUL DENIAL OF OR INTERFERENCE WITH PARENTING TIME OR UNLESS THE OTHER PARTY AGREES IN WRITING TO CHANGE CUSTODY.
- IF YOUR CHILD IS THE SUBJECT OF A CHILD IN NEED OF PROTECTION OR SERVICES (CHIPS) PROCEEDING OR CERTAIN DELINQUENCY PROCEEDINGS, THE COURT MAY NOT BE ABLE TO IMMEDIATELY DECIDE YOUR REQUEST TO MODIFY CUSTODY.
- COURT PERSONNEL AND THE COUNTY ATTORNEY'S OFFICE **CANNOT** HELP YOU FILL OUT THESE FORMS.
- YOU SHOULD SEE A LAWYER IF YOU DON'T KNOW HOW TO ANSWER THE QUESTIONS ON THESE FORMS OR IF YOU THINK THE OTHER PARTY WILL HIRE A LAWYER.
- YOU **MUST** FILL OUT BOTH THE NOTICE OF MOTION AND MOTION AND THE AFFIDAVIT IN SUPPORT OF MOTION AND YOU **MUST** FOLLOW THE INSTRUCTIONS AS SET FORTH BELOW.
- TYPE YOUR ANSWERS OR PRINT NEATLY USING DARK INK.
- IF YOU NEED MORE SPACE TO ANSWER A QUESTION, USE AN ADDITIONAL FULL SHEET OF PAPER.
- THE COURT EXPECTS EVERY PERSON WHO APPEARS IN COURT WITHOUT A LAWYER TO KNOW THE LAW. IF YOU ACT AS YOUR OWN LAWYER, YOU MUST DO WHAT A LAWYER WOULD DO.

# INTRODUCTION

This introduction summarizes the process of asking the court to change custody. Steps 1-9 of these Instructions explain the process in detail.

A judge can only change or modify custody if the standards for changing custody are met. The Legislature has spelled out those standards in Minnesota Statutes Section 518.18. It is your responsibility to give the judge the information s/he needs to decide if your request meets the legal standards. The forms listed on the cover page of these Instructions are designed to prompt you to provide the necessary information.

First you fill out two forms called *Notice of Motion and Motion* and *Affidavit in Support of Motion to Change Custody*. The information in the Affidavit must be very detailed. It will probably take you 2 or more hours to fill in the paperwork. The Affidavit in Support of Motion is your written testimony explaining why you think there should be a change in custody. You can also get Affidavits from other people to support what you say, and attach them to your Affidavit. (Read Step 2 of these Instructions for important information about Affidavits.)

When your paperwork is complete someone other than you must serve copies of the papers on the other party. You will file the originals with the court, and you may have to pay a court filing fee. After receiving your papers, the other party might serve you with responsive papers, explaining his or her opposition to your Motion. Then you go to your court hearing.

## What Happens at the Court Hearing?

If the other party disagrees with your request to change custody, there will usually be two court hearings. At the first hearing, the judge will only consider the written Affidavits you and the other party filed. The first hearing is short – up to 30 minutes. At this hearing, the judge will decide if you have presented a “prima facie case.”

For purposes of deciding if you have presented a “prima facie case”, the judge will assume that all facts stated in your Affidavit are true. If the facts described in your written Affidavit support a change in custody, the judge may schedule a second, longer hearing. At the second hearing you and the other party will testify under oath and bring witnesses. The judge will then decide what the facts really are, and will decide if those facts support a change of custody. However, if the judge decides at the first hearing that s/he will not change custody even if you prove that everything in your Affidavit is true, then you do not have a “prima facie case” and your case will be dismissed after the first hearing (that will be the end of your case). The judge will evaluate your Affidavit by considering the facts you include, not your conclusions. You must give the judge sufficient information so the judge can draw his/her own conclusions. It is very important to do a good job writing your Affidavit.

**Avoid this Mistake:** Often people think they can briefly write what they want in the Motion and Affidavit forms, and supply the details to the judge at the hearing. If you do this, the judge may limit what you can present or say at the hearing to what was stated in your Motion and Affidavit, and that may not be enough to convince the judge to grant your request to change custody. If your case is dismissed, you may be prohibited from filing another motion to change custody until 2 years later. (See Minnesota Statute Section 518.18 for restrictions on asking for a modification of custody.)

If you choose to represent yourself, the court rules say that you are responsible for knowing the law and rules, just like an attorney. The judge cannot give you special consideration or help because you are not a lawyer. Your written Affidavits, filed at least 14 days before the first hearing, must present a “prima facie case” or your case will be dismissed. Include facts in your Affidavit, not just your conclusions. For example, stating, “the other parent abuses the child” is a conclusion. State the facts so the judge can decide if the actions taken by the other parent constitute abuse.

### **Custody Evaluations**

On many occasions at the end of the first hearing the judge will ask for a custody evaluation in order to have someone gather facts to help the judge make a decision. A custody evaluation from Family Court Services takes at least 120 days, and there is a cost involved. (If a party has an “IFP” the fee may be waived. “IFP” is explained at Step 8.) If a custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least several months. The judge may also appoint a guardian ad litem to do a custody evaluation. This person may or may not be a lawyer.

### **If the Child is in Danger**

In extremely rare cases, a judge may change custody on a temporary basis before a full hearing with live testimony has been heard by the court. Those rare cases involve situations in which the child is in immediate, significant danger if the existing custody arrangement continues. If your child is in immediate danger, you may seek legal advice from a private attorney or other legal services provider; contact social services; seek an Order for Protection; or request an emergency expedited hearing.

**Please Note:** An Order For Protection might be available in extreme situations, but an Order for Protection will not permanently change custody. You need to use the motion papers listed on the cover page of these Instructions to request a permanently change custody. You can get help with Orders for Protection from the court administrator’s office or local domestic abuse advocacy programs.

If you choose to request an emergency expedited hearing, you will need to draft your own court forms or seek help from a private attorney or other legal service provider, as there are **no court forms available** from court administration or on the public website.

If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may not be able to immediately decide your request to establish custody.

## **DETAILED INSTRUCTIONS**

### **Step 1**

#### ***Fill Out the Notice of Motion and Motion for Change of Custody Form***

Fill out the *Notice of Motion and Motion for Change of Custody* form. This form tells the court and the other party that you wish to change custody of the child(ren) and the date and time of the hearing.

**FILL IN THE TOP PART OF THE FORM (this is known as "the caption"):**

**NOTE: The information to fill in the top part of the form can be found at the top of your divorce or paternity decree or other existing order. Be sure to copy the information EXACTLY as it is on your current order.**

- Write the case number (also called the "court file number") located on your existing order.
- On the line marked "Name of Petitioner" write the name of the Petitioner as listed on your current custody order or divorce or paternity decree.
- On the line marked "Name of Respondent" write the name of the Respondent as listed on the current custody order or divorce or paternity decree.
- On the "TO" line, write the full name and street address of the other party.

**DO NOT FILL IN THE DATE, TIME, JUDICIAL OFFICER'S NAME OR LOCATION OF THE HEARING YET. YOU WILL DO THAT AS PART OF STEP 4.**

**FILL OUT THE REST OF THE FORM:**

**NOTE: The instructions that follow are numbered the same as the questions on the *Notice of Motion and Motion* form.**

1. Print the full name and date of birth of each child for whom you wish to change custody.
2. Print the date of the existing custody order or divorce or paternity decree.
3. **Legal** custody means which parent or parents have a say in the major decisions regarding the child(ren)'s life, including education, religious upbringing and medical treatment.

If you want to change the **legal** custody of your child(ren), check the box marked "Yes," **and** then check the box for joint legal custody, **or** the box for sole legal custody and write in who should have legal custody.

If you do **not** want to change **legal** custody, check the box marked "No," **and** skip to the next question.

4. **Physical** custody means the person(s) who will be responsible for the routine daily care and control of the child(ren). If you want to change **physical** custody of your child(ren), check the box marked "Yes," **and** then the box for joint physical custody, **or** the box for sole physical custody, **and** write in who should have sole physical custody.

If you do **not** want to change **physical** custody, check the box marked "No," **and** skip to the next question.

5. You do not need to write anything for this question.
6. You do not need to write anything for this question.
7. Check box 7 only if you have been ordered to pay child support, you stopped paying child support because the children were living with you, and you want the Court to forgive your child support for the time you were not paying it when the child(ren) were with you.

8. You do not have to write anything for this question, but you should read and understand it.

**Read the Verification and Acknowledgement carefully. By signing your name, you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party.**

## Step 2

### Fill Out the *Affidavit in Support of Motion* Form

Fill out the *Affidavit in Support of Motion* form, which tells the Court and the other party what you are asking for from the Court and **why** you are asking for it.

#### FILL IN THE TOP PART OF THE FORM (KNOWN AS THE “CAPTION”)

- Fill in the top part of the form (caption) the same way you did on the *Notice of Motion and Motion* form.
- Print the name of the county where you sign the affidavit on the line that reads: “STATE OF MINNESOTA, COUNTY OF \_\_\_\_\_.”
- Print your name on the blank above Paragraph/Question #1.

### Fill in Paragraphs/ Questions 1-37\*\*

**\*\*Note:** If you are asking to change legal custody only, answer only paragraphs/questions 1 through 11, 36 and 37 on the Affidavit. The other questions are only necessary for a change in physical custody.

Read the questions on the Affidavit carefully and answer each question with detailed, specific information. **Attach all copies of day care, school, medical or other documents that help support the statements in your Affidavit.** These copies should be in Affidavit form, if possible. The Affidavit is a statement that must be signed under penalty of perjury. The Affidavit should start with this sentence: “\_\_\_\_\_, state the following:” The name of the person giving the information goes into the blank space; for example, the name of the doctor or daycare provider. Signing an Affidavit under penalty of perjury means the person is stating that the information in the Affidavit is true to the best of his/her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

The Introduction section on page 3 explains that the judge will read your *Affidavit in Support of Motion to Change Custody* and determine if you have presented a prima facie case. Questions/paragraphs 1-37 prompt you to give information that the judge must have in order to decide if you have presented a prima facie case. Question/paragraph 37 is a place to write anything else you think is important in your case. Generally, you will not be allowed to tell the judge additional information other than what is listed in your affidavit at the first hearing. **If you want the judge to know something, put it in writing in your Affidavit.**

Questions 15-35 will help the court determine the appropriate amount of child support. If you want an estimate of how much child support may be ordered by the court if a change in physical custody is granted, you can use a calculator created by the Department of Human Services, which is available on line at:

## Step 3

### Complete Confidential Information Forms

**NOTE!** Certain information is considered confidential and not available to the public. To keep this information private and not available to the public, you must attach Form 11.1 or Form 11.2 to certain documents that contain confidential information.

See Rule 11 of the Minnesota General Rules of Practice for more information. One form can be used for all documents containing confidential information. Examples of documents that have confidential information include:

- Paycheck stubs, employer statements, W-2 forms, or business income and business expenses
- Copies of your tax returns and schedules
- Bank statements
- Credit card statements
- Check registers

To protect your privacy, the other party, and your child(ren), all social security numbers, employer identification numbers, and financial account numbers must not be listed on papers you file with the court. You must use Form 11.1 when providing these confidential numbers to the court. Form 11.1 can be found at [www.mncourts.gov/forms](http://www.mncourts.gov/forms) under the court forms category of “Confidential Information” and is court form number CON111. Failure to do this means these numbers could be available to the general public and you could be charged court costs and the court may order other sanctions against you for the failure to keep your and the other party’s social security number, employer identification number, and/or financial account numbers private. **If these numbers are already on file with the court, you do not need to submit another Form 11.1.**

## Step 4

### Signing Papers and Obtaining from Court Administrator Hearing Date, Time and Location

When your *Notice of Motion and Motion* and *Affidavit in Support of Motion to Change Custody* have been completed (as well as the confidential information forms, if applicable) take the papers to the Court Administrator’s office. The court deputy will assist you in obtaining the court date for your hearing.

Fill in the date, time, location, name of the judge and room number of the hearing on the first page of the *Notice of Motion and Motion* form.

## Step 5

### Make Copies of Forms

- Make two copies of the *Notice of Motion and Motion* form and all attachments, two copies of your *Affidavit in Support of Motion* form, and all attachments.
- Keep one copy of each form for yourself (make sure to bring your copies with you to court on the day of your hearing).
- Give one copy of each form and any attachments to the other party, following the “service” instructions at Step 6.
- You will file each form and any attachments with the Court Administrator following the instructions at Step 8.

## Step 6

### Serve Notice on the Other Party

You must arrange for the other party to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called "service of process." **A party to an action is not allowed to serve the other party to the action.** You must have someone else who is over the age of 18 serve the other party. The papers can be served personally (handed to the other party), or by mail. The other party must receive the papers at least 14 days before the hearing. Papers **CANNOT** be served on legal holidays. If papers are served by mail, Court Rules require adding three days, so that papers must be postmarked at least 17 days before the hearing.

**To serve the papers personally, follow these instructions:**

**At least 14 days before the hearing date**, the server hands to the other party **one copy** of the completed *Notice of Motion and Motion*, and **one copy** of your *Affidavit in Support of Motion*, including one copy of any and all attachments. Example: If the hearing date is January 18, the papers must be served on or before January 4. If January 4 is a legal holiday, the papers must be served by January 3.

**To serve the papers by mail, follow these instructions:**

The server places **one copy** of the completed *Notice of Motion and Motion* form, **one copy** of your *Affidavit in Support of Motion*, and one copy of any and all attachments in an envelope.

The server must mail the envelope containing the forms to the other party **at least 17 days before the hearing date**. Example: If the hearing is January 18, the papers must be postmarked no later than December 31 because January 1 is a legal holiday and service cannot be made on legal holidays.

**Warning: If your forms are not personally served on the other party at least 14 days before the**



hearing OR mailed to the other party at least 17 days before the hearing date, your Motion may NOT be heard by the court.

## Step 7

### The Person Who Served the Papers Personally or By Mail Fills Out the Affidavit of Service Form

After the papers are served, the person who served the papers must fill out an *Affidavit of Service* form. The Affidavit of Service is proof for the Court that the papers were served on the other party.

#### **IF THE PAPERS WERE SERVED PERSONALLY, FOLLOW THESE INSTRUCTIONS:**

1. Use the *Affidavit of Personal Service* (Court Form SOP102).
2. Fill in the top part of the form the same as you did for the *Notice of Motion and Motion* form.
3. On the blank line after it says “State of Minnesota, County of \_\_\_\_\_,” fill in the name of the county where the server signs the *Affidavit of Personal Service*.
4. Fill in the name and birth date of the server.
5. Fill in the date the papers were handed to the other party.
6. Fill in the name of the other party.
7. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.
8. After it has been signed, make one copy of the *Affidavit of Personal Service* for your records. You will file the papers with the Court as part of Step 8.

#### **IF THE PAPERS WERE SERVED BY MAIL, FOLLOW THESE INSTRUCTIONS:**

1. Use the *Affidavit of Service by Mail* (Court Form SOP104).
2. Fill in the top part of the form the same as you did for the *Notice of Motion and Motion* form.
3. On the blank line after it says “State of Minnesota, County of \_\_\_\_\_,” fill in the name of the county where the server was when (s)he signed the *Affidavit of Service*.
4. Fill in the name of the person who mailed the envelope.
5. Fill in the name of the person to whom the documents were mailed (the other party).

6. Write in the address of the other party where the papers were mailed.
7. Write in the name of the city and state where the post office was located from which the documents were mailed.
8. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.
9. After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records. You will file the original with the Court as part of Step 8.

## Step 8

### File the Forms with the Court

The following documents must be filed with the Court **at least 14 days before the date of the hearing**:

- The *Notice of Motion and Motion to Change Custody*;
- The *Affidavit in Support of Motion to Change Custody*;
- The Confidential Information Forms; (such as Form 11.2)
- The *Affidavit of Service by Mail* OR *Affidavit of Personal Service*

Pay any required filing and/or motion fee.

You can bring the papers to Court Administrator's office. You can also mail the papers to the Court, but you will need to allow 3 extra days for mailing (mail at least 17 days before the hearing date. The Court must receive the papers 14 days before the hearing.)

If you cannot afford to pay the filing / motion fee, a judge may waive it under certain circumstances. Ask Court Administration for an In forma Pauperis (IFP) application. Fill out this application and sign it. Court Administration will take your Affidavit to a judge for review.

The judge will review your application and decide if you must pay the filing / motion fee. The Court cannot accept your legal papers without either the payment of the filing / motion fee or an order from a judge waiving the fee.

## Step 9

### Appear in Court

The Introduction section of on page 3 of these Instructions explained the purpose of the first hearing, and explained that you may need to have a custody evaluation and second evidentiary hearing before the judge makes a decision.

Plan to arrive 15 minutes before your scheduled hearing time. Bring your copies of all the papers you filed with the court.

\*\*\*Call the Court if you have questions. Usually the judge may not listen to live testimony at the first hearing. If you have requested an emergency hearing and claim the child is in immediate danger, you may have to testify at the first hearing.

**Do not bring children to the first hearing**, unless the judge requests that you to bring them.

**The hearing is very formal. You are expected to know and follow the court rules of procedure.** You should dress appropriately and be respectful to the other party and to everyone in the courtroom. Do not interrupt the judge or other party. Try to stay calm, and avoid unnecessarily criticizing the other party. Answer any questions from the judge honestly. Direct all your comments to the judge, not the other party.